STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of LA'RHON LONDON JONES, JR., and LA'MORION LEWIS JONES, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

LILLIAN BRIDGEMON,

Respondent-Appellant,

and

LA'RHON JONES,

Respondent.

UNPUBLISHED
April 26, 2007

No. 271853
Wayne Circuit Court
Family Division
LC No. 05-442410-NA

Before: Neff, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Respondent-mother, Lillian Bridgemon,[1] appeals as of right an order terminating her parental rights under MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (k)(i). We affirm.

I

Respondent first argues that the proceedings were void because the trial court lacked personal jurisdiction over her. We disagree. "Whether a court has personal jurisdiction over a party is a question of law, which this Court reviews de novo." *In re Terry*, 240 Mich App 14, 20; 610 NW2d 563 (2000).

[1] Because respondent La'Rhon Jones is not involved in this appeal, this opinion refers to Bridgemon as simply "respondent."

Respondent contends that because the record from the preliminary hearing on May 19, 2005, indicates that the court failed to attempt service on her while she was hospitalized, all proceedings in this case are void. Respondent asserts that the record is otherwise silent concerning service on her, and that the failure to serve her, with sufficient notice, voids all orders flowing from the petition, MCL 712A.18(4).

The minor children were removed from respondent's care on May 18, 2005, after police responded to a complaint that respondent had been evicted and attempted to set the home on fire by dousing lighter fluid on the home and endangering the children. Respondent was reportedly paranoid schizophrenic and was hospitalized. The children were placed in temporary care, and a preliminary hearing was scheduled for the following day, May 19, 2005.

Although respondent remained hospitalized on May 19, 2005, and apparently was not served with a summons for the preliminary hearing, she had notice of and was served a summons for the pretrial hearing on June 2, 2005. She was present at and represented by counsel in the subsequent proceedings over the course of the following year, including a dispositional review hearing on October 18, 2005, and two days of trial in May and June of 2006. At no time during the proceedings did respondent raise the issue of personal jurisdiction. Respondent should not now be heard to complain of inadequate notice, since she clearly had notice of the dispositional hearings and the trial. *In re Parshall*, 159 Mich App 683, 691-692; 406 NW2d 913 (1987). Under these circumstances, the failure to serve respondent with respect to the preliminary hearing is not fatal to the court's exercise of personal jurisdiction with respect to termination. As this Court observed in *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992), such circumstances warrant application of the general rules of waiver of objections regarding service of process:

> [G]iven that a probate court is to consider all hearings, from the initial adjudication or disposition hearing to the termination hearing, as a single continuous proceeding, *In the Matter of LaFlure*, 48 Mich App 377, 391; 210 NW2d 482 (1973), given that respondent does not challenge the notice he received with regard to the review hearings or the termination hearing, given that respondent appeared at the termination hearing without claiming a lack of personal service, given the disruption collateral attacks of the nature of the attack raised in this case cause to the placement process and given a child's need for permanency, stability and finality, we believe that the general rules governing waiver of objections regarding service of process objections should apply in termination proceedings where a parent or parents appear at the termination hearing, challenge the petition for termination, and fail to challenge or raise the issue of lack of service of process arising out of prior proceedings.

II

We find no basis for reversal on the remaining grounds argued by respondent. In order to terminate parental rights, the trial court must find that at least one statutory ground has been established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 357; 612 NW2d 407 (2000). Termination of parental rights is mandatory if the trial court finds that the petitioner

established a statutory ground for termination, unless the court finds that termination is clearly not in the child's best interest. *Id*. at 354.

We review the trial court's findings that a ground for termination has been established and the court's decision regarding the child's best interest under the clearly erroneous standard. MCR 3.977(J); *In re Trejo, supra* at 356-357. Additionally, the trial court's findings of fact may not be set aside unless they are clearly erroneous; this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C).

A

Respondent argues that she was denied the effective assistance of counsel on numerous grounds. Effective assistance of counsel claims in parental rights termination cases are analogous to effective assistance of counsel claims in criminal cases. *In re CR*, 250 Mich App 185, 197-198; 646 NW2d 506 (2002). This issue is unpreserved, and this Court's review is therefore limited to the record before us. *People v Barclay*, 208 Mich App 670, 672; 528 NW2d 842 (1995).

To establish ineffective assistance of counsel, a respondent must show (1) that counsel's performance was deficient, i.e., fell below an objective standard of reasonableness, and (2) that the representation so prejudiced respondent that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *In re CR, supra* at 198; *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994).

Respondent argues that her attorney was ineffective because he did not appear at three hearings. The record indicates that with respect to one hearing, the attorney called the court before the hearing to inform the court that he could not attend. Nonetheless, even if counsel's nonappearance was error falling below an objective standard of reasonableness, the hearings (other than the preliminary hearing) were adjourned, and there is no evidence that respondent was prejudiced, i.e., that the outcome of the proceedings would have been different. Contrary to respondent's claims, the trial court did not conduct improper proceedings in counsel's absence by ordering a drug screen, which the trial court was empowered to do. MCR 3.973(A). As petitioner notes, the court conducted proceedings on the record to the extent necessary to make a record concerning the adjournment.

Likewise, respondent has failed to show that counsel was ineffective on the various other grounds asserted, including that counsel was ill-prepared, inexperienced, failed to make appropriate objections, and was wholly inadequate when present at proceedings. Although respondent complains that counsel failed in several regards to minimize evidence of her substance abuse, failed to object to the results of the improper drug screen, and failed to later determine who, in fact, had appeared in court after consuming alcohol,[2] respondent's substance

[2] Respondent's drug screen was positive for only marijuana, and not alcohol; thus, respondent asserts that one of the other attorneys, the social worker, or the court was responsible for the alcohol odor. However, the court ordered a drug screen because there was a strong odor of alcohol in the courtroom. The court noted that it may not be from respondent, but from other

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abuse was only one of several aspects of respondent's failure to comply with requirements for reunification with her children. As discussed below, respondent was not prejudiced by the admission of this evidence where there was ample evidence to support termination.

For the same reason, respondent has failed to show that she was prejudiced by other alleged errors by counsel or the lack of continuity in her representation resulting from substitute house counsel. Evidence established that respondent failed to maintain suitable housing, maintain visitation with her children, complete and benefit from individual counseling and parenting classes, and had essentially abandoned the children. Even if counsel's performance was deficient in any regard asserted, the alleged deficiency was not outcome determinative given respondent's overall failure to comply with her Parent/Agency Agreement.

B

Respondent argues that the trial court erred in failing to appoint a guardian ad litem for respondent, given, among other reasons, that (1) she was not in court for the preliminary hearing due to her hospitalization for mental illness, (2) she suffered from paranoid schizophrenia and received Social Security benefits for her mental illness, and (3) her IQ was in the second percentile, and there were allegations that she was incapable of caring for herself. MCR 3.916(A) provides: "The court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it." We find no abuse of the court's discretion.

At the pretrial hearing, the trial court inquired of respondent's attorney whether a guardian ad litem was needed, and the attorney stated that one was not needed. After respondent testified at length and it was apparent from her testimony that she understood the questions and could appropriately answer them, all parties agreed that a guardian ad litem was unnecessary. Respondent participated in the proceedings below and the record reflects that she understood what was required of her and the nature of the legal proceedings. We cannot conclude that the appointment of a guardian was necessary for the protection of respondent's welfare. Moreover, respondent has failed to show any alleged error in this regard was not harmless, given the basis for the termination.

C

Respondent argues that the trial court's ex parte contact with her and the proceedings in the absence of her counsel warrant a new trial. We disagree.

As noted above, the trial court did not err in proceeding in a limited capacity without the presence of respondent's attorney. Respondent was represented by counsel at all hearings except the preliminary hearing and the two that were adjourned. On those two occasions, it was not error for the trial court to make a record of its reasons for granting an adjournment and to give the parties the next court date. The limited proceedings with regard to ordering respondent to take a breathalyzer test, and the questioning of the foster care worker about the placement of the children resulted in no prejudice warranting reversal.

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"parties," and it was not from the attorneys or the protective services worker.

D

Respondent argues that the grounds for termination were not established by clear and convincing evidence. The trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(a)(ii), (c)(i), (g), (j), and (k)(i). Because respondent challenges termination under only subsections 19b(3)(g) and (j),[3] but not the remaining grounds found by the court, her argument fails at the outset. Only one statutory ground need be established by clear and convincing evidence to support termination. *In re Trejo, supra* at 350, 354.

In any event, the trial court did not clearly err in finding that respondent failed to provide proper care and custody for the children and would not be able to do so within a reasonable time, subsection 19b(3)(g), and that there was a reasonable likelihood that the children would be harmed if returned to respondent, subsection 19b(3)(j). At the time the children were removed, police were called after respondent poured lighter fluid on the floor of the home from which she had just been evicted, while the children were home. Although respondent testified that she intended the action as a threat against a neighbor with whom she was arguing and that she did not intend to start a fire, she was hospitalized for her mental health issues following the incident. Clearly, she was not providing proper care and custody for her children.

At the time of the termination trial, respondent had made no progress with her mental health issues, and it was unclear whether she had housing for the children. She testified that she was not able to live by herself due to her paranoid schizophrenia and that she moved three or four times during the pendency of the case. Respondent failed to comply with her treatment plan. Further, her mental health issues could not be resolved within a reasonable time and without resolution of that issue, she could not provide proper care and custody for her children within a reasonable time considering their ages and there was a reasonable likelihood, based on respondent's conduct or capacity, that the children would be harmed if returned to respondent's home. The trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence.

Further, the trial court did not clearly err in its best interests determination. *Trejo, supra* at 344, 356. Respondent argues that her children are bonded to her. Respondent last saw the children when they were under 2 years old, and as petitioner notes, it would be surprising if the children exhibited familiarity with respondent after ten months of not seeing her at such young ages. Respondent has otherwise failed to show that termination was clearly not in the children's best interests. *Id*. at 357.

Affirmed.

/s/ Janet T. Neff
/s/ Peter D. O'Connell
/s/ William B. Murphy

[3] Respondent also challenges termination under (3)(b)(ii), but this ground was not relied on by the trial court.